

1           A       I do not remember him doing it.

2           Q       Do you remember it was done  
3 because Comcast had done deals directly with  
4 the Dallas Cowboys, and directly with the  
5 Atlantic Falcons, and the league was unhappy  
6 because the NFL Network was worried Comcast  
7 would be able to buy up deals on the cheap  
8 with individual teams.

9                   MR. LEVY: Your Honor, at this  
10 point, Mr. Carroll is just arguing with the  
11 witness, offering his own testimony. There's  
12 no question there, and it's argumentative.

13                  MR. CARROLL: I have documents  
14 that will support all this.

15                  JUDGE SIPPEL: He's asking the  
16 witness to agree with that conclusion now.

17                  MR. LEVY: But the witness has  
18 already said he doesn't even remember the  
19 premise, so that there's -- he's not engaged  
20 in an effort to refresh his recollection. The  
21 witness says he didn't remember it happening.  
22 Mr. Carroll is asking him, you remember it

1 happened because. He doesn't remember --  
2 there's no foundation here. He's just  
3 arguing with the witness at this point.

4 JUDGE SIPPEL: It's cross  
5 examination. I'll give you a bit of leeway  
6 here. Are you okay with this, Mr. Hawkins?

7 THE WITNESS: Yes, that's fine. I  
8 remember all of these arguments being made in  
9 connection with the resolution, the passage of  
10 the resolution, whenever that took place. I  
11 simply don't remember whether there's a  
12 Commissioner edict, or the planning of it, or  
13 anything of that nature.

14 MR. CARROLL: For identification,  
15 Your Honor, this is Comcast Exhibit 332, an  
16 email from November of '04, attached to it a  
17 memorandum from Commissioner Tagliabue dated  
18 November of '04, attached to that a memorandum  
19 from Commissioner Tagliabue of September 2004.  
20 Bates numbers NFL-E0940136 through 139.

21 MR. CARROLL: May I distribute  
22 these?

1 JUDGE SIPPEL: Yes, you may, sir.

2 MR. CARROLL: Thank you.

3 JUDGE SIPPEL: It's marked for  
4 identification as you described it, as Comcast  
5 number 332?

6 (WHEREUPON, THE DOCUMENT REFERRED  
7 TO WAS MARKED AS COMCAST EXHIBIT  
8 332 FOR IDENTIFICATION.)

9 MR. CARROLL: 332, Your Honor.

10 JUDGE SIPPEL: Thank you.

11 THE WITNESS: Thank you.

12 BY MR. CARROLL:

13 Q Let's work backwards in this  
14 exhibit. First, the third page of the exhibit  
15 is dated September 16, 2004. It's from  
16 Commissioner Tagliabue to the club presidents  
17 and chief executives. Do you see that?

18 A Yes.

19 Q Do you see that -- does this  
20 refresh your memory that the Commissioner  
21 imposed a moratorium on direct deals between  
22 clubs and cable companies at this point in

1 time?

2 A Let me just finish reading this.

3 Q All right. I would direct your  
4 attention -

5 A Through October 31, 2004. Yes.

6 Q And he says, "I've determined that  
7 a moratorium should be placed on further  
8 launches of individual club linear cable  
9 television channels through October 31, 2004."  
10 Right?

11 A Yes.

12 Q Does this jog your memory?

13 A Yes.

14 Q Actually, he then cites at the end  
15 of it that, if any club member has a question  
16 you're one of the people they should call  
17 about it.

18 A Yes, he does.

19 Q Do you now remember it?

20 A Yes.

21 Q And under this moratorium, the  
22 local club teams were prevented from going

1 forward and doing linear cable television  
2 channel deals with cable companies, including  
3 my client. Right?

4 A Until the passage of the  
5 resolution, yes.

6 Q And then that was extended again  
7 in the memo that precedes it, November 12,  
8 2004, that they're going to maintain in place  
9 the moratorium on further launches. Do you  
10 see that?

11 A Yes.

12 Q And, again, you're referred to as  
13 one of the people that the club owners can  
14 call with any questions.

15 A Yes.

16 Q Okay. And then, subsequently, at  
17 the annual meeting in the spring, the Owners  
18 all got together and agreed on a resolution  
19 binding on everyone that made the moratorium  
20 an effective rule for the league that said  
21 local teams can't do direct linear channel  
22 deals with cable companies. Right?

1           A       Wrong. That's the resolution that  
2 I described to you earlier, which was slightly  
3 different than you said. That's what I had  
4 recalled as the resolution, and not the  
5 moratorium.

6           Q       So, did the resolution continue  
7 the restriction in the moratorium?

8           A       The resolution allowed local clubs  
9 to do direct content deals with cable systems  
10 under certain circumstances.

11          Q       Certain circumstances. They had  
12 to go through the NFL Network for review.

13          A       I don't recall whether they had to  
14 go through the NFL Network for review, but  
15 there had to be an NFL Network deal in place  
16 as a hurdle before they could do a deal.

17          Q       Oh, so what was happening was  
18 business was being forced into the NFL Network  
19 to prevent the cable companies from dealing  
20 one-on-one direct with the individual teams.  
21 Correct?

22          A       To prevent the cable companies

1 from doing an end around, as you had  
2 characterized it earlier, yes.

3 Q Yes. And, in fact, it was  
4 described not only by you and others as an end  
5 around, but as getting relationships on the  
6 cheap with the NFL. That was your objection.  
7 Right?

8 A "Your" being mine, or the NFL?

9 Q The NFL.

10 A I would say that I remember that  
11 phrase. It might have been in a deck.

12 Q Might have been in a slide deck.

13 A Yes.

14 Q Well, you just saved me some time.  
15 Okay. So, the bottom line of all this is that  
16 the moratorium, do you remember, get imposed  
17 after Comcast has done a couple of deals with  
18 the Atlantic Falcons, and the Dallas Cowboys.  
19 Do you remember that?

20 A I remember that they had done  
21 those.

22 Q Okay. And that's when the

1 Commissioner and the NFL Network looked at  
2 that and said wait a minute, slow down. We  
3 want a moratorium on any more deals like that  
4 until we can figure something out. Right?

5 A The only thing that I wouldn't  
6 answer, just because I didn't remember the  
7 moratorium is the exact time sequence. But,  
8 yes, that was the substance of the moratorium.

9 Q And the net effect of all this  
10 when you were done is that, to prevent cable  
11 companies like Comcast from getting deals  
12 directly with Owners on the cheap, as that  
13 slide refers to, there was now a process that  
14 required a deal to be done with the NFL  
15 Network, as part of any deals with the local  
16 teams. Fair summary?

17 A As a prerequisite to any deals  
18 with the local teams. That's a fair summary  
19 with that one qualification.

20 Q Which would make more money for  
21 the NFL Network. Right?

22 A It would make more money for the

1 collective, yes.

2 Q Okay. And it would prevent  
3 Comcast from doing deals less expensively with  
4 individual teams. Right?

5 A Standalone deals, yes.

6 Q And, if anybody else -- now,  
7 you're a lawyer. Do you have any antitrust  
8 background?

9 A Minimum.

10 Q Okay. Let's just try this.  
11 Nobody else could get away with this  
12 moratorium, except the NFL, because of the  
13 exemption it enjoys under the antitrust laws.  
14 Isn't that right?

15 MR. LEVY: Objection, Your Honor.  
16 That calls for a legal conclusion. It's  
17 argumentative. We're not -

18 JUDGE SIPPEL: Well, we do have a  
19 lawyer. He's a little bit familiar with the  
20 antitrust law. The concept is -- I don't -

21 MR. LEVY: Nobody else could get  
22 away with it, Your Honor? I mean, what kind

1 of question is that?

2 JUDGE SIPPEL: Well, it's a cross  
3 examination question. Do you want him to  
4 phrase it a little bit differently? I mean,  
5 we could do that, but it's going to take time.  
6 Let's go. Can you handle that one, Mr.  
7 Hawkins?

8 THE WITNESS: I would just  
9 disagree with the premises in this one. I  
10 don't think that the antitrust exemption has  
11 anything to do with this. I think that this  
12 is, essentially, creation of a new single  
13 product.

14 BY MR. CARROLL:

15 Q So, you think it would be lawful  
16 for any trade association in the country to  
17 prevent its members from doing separate deals  
18 with a trading partner, and require some  
19 collective deal making. Is that your view?

20 A First off, it is not an  
21 organization imposing an edict. This is,  
22 basically, a body that voted to, in effect,

1     adopt a regulation for itself in an effort to  
2     create a new product.

3           Q       Let me just ask this last question  
4     in this area, and then we'll go back to the  
5     calculation. The NFL, as you understand it,  
6     enjoys an exemption under the antitrust laws.  
7     Correct?

8           A       Yes.

9           Q       That exemption permits the NFL, as  
10    you understand it, to conspire as a league to  
11    monopolize its football product. Correct?

12          A       Are you kidding? I can't answer  
13    yes to that. The NFL is permitted to sell a  
14    pooled set of rights to television broadcast  
15    as a collective in sponsored telecast.

16          Q       Because of the -

17          A       That's correct.

18          Q       -- antitrust exemption it enjoys.

19          A       That's what the antitrust  
20    exemption covers, yes.

21          Q       Did you ever give advice -

22                   MR. CARROLL: Well, this will draw

1 an objection on privilege. We'll leave that  
2 to the hearing.

3 BY MR. CARROLL:

4 Q Do you still have Exhibit 306 in  
5 front of you? That's the back of the envelope  
6 calculation.

7 A Somewhere. Yes, sir.

8 Q Okay. This is where you  
9 calculated, we've seen before you calculated  
10 what the NFL side stood lose if Comcast  
11 tiered.


12 JUDGE SIPPEL: What are we on now,  
13 306?

14 MR. CARROLL: 306. That's the big  
15 old page -

16 JUDGE SIPPEL: I have it. I want  
17 the record to reflect it.

18 MR. CARROLL: Yes. Thank you,  
19 Your Honor.

20 BY MR. CARROLL:

21 Q And in the third line you say I  
22 did the economics with him (Comcast gets )

1 [REDACTED] in benefit to its bottom line if it  
2 tiers us, gives no cut in digital basic price  
3 to reflect its [REDACTED] sub per month cost  
4 savings, and no one else buys digital sports  
5 tier). Let me pause there, because the  
6 calculation goes on.

7 A Yes.

8 Q So, the first piece of this says  
9 that if they continue at -- there's no cut in  
10 the price, and they continue at [REDACTED] per  
11 sub per month, by tiering, Comcast would save  
12 [REDACTED] Is that correct?

13 A Yes, I believe that's a correct  
14 statement.

15 Q Okay. And, you agree with me  
16 there's nothing wrong with a distributor  
17 trying to save money like that?

18 A As long as it's permitted by law,  
19 no.

20 Q Okay. And then you go on to say,  
21 "That translates, that [REDACTED] translates  
22 to [REDACTED] per club lost." I take it you

1 just divided, is it 32 clubs?

2 A Thirty-two.

3 Q You've just divided the 32 into  
4 the [REDACTED]

5 A Yes.

6 Q And that's your way of telling  
7 this Denver Bronco Chief Operating Officer,  
8 look, they're saving, Comcast is saving on  
9 each individual club [REDACTED] That was  
10 your point.

11 A No, not Comcast is saving, but  
12 rather you, Denver, are looking at a [REDACTED]  
13 [REDACTED] deal at the same time as Comcast is  
14 taking actions that are costing you [REDACTED]

15 Q Well, is -- no, no, no. Is this  
16 costing -- I thought this calculation of the  
17 \$54 million was what Comcast would benefit.

18 A Yes.

19 Q Not what the NFL's cost would be.  
20 We've already done a separate page where you  
21 calculated that.

22 A Comcast's benefit in the sense

1     that they're no longer making [REDACTED] in  
2     payments to the NFL.

3             Q        Their savings.

4             A        Yes, their savings that otherwise  
5     they'd be paying to the NFL, which translates  
6     to [REDACTED] in payments that each club  
7     would get.

8             Q        Okay. So, Comcast would save [REDACTED]  
9     [REDACTED] and on a per club basis, that would  
10    be [REDACTED] And then you did a  
11    calculation that said, "And if you take a 30  
12    percent incremental take rate on the sports  
13    tiers, would get them to approximately 35  
14    percent of people who buy NFL Network a la  
15    carte", you're projecting that maybe they'll  
16    be able to sell to people at the sports tiers.  
17    Right?

18            A        Correct.

19            Q        At an average price, you're  
20    guesstimating of [REDACTED] a month.

21            A        Correct.

22            Q        And you calculate an annual

1 contribution to Comcast's bottom line of [REDACTED]

2 [REDACTED] Is that correct?

3 A That is what it says.

4 Q Okay.

5 A I'm not vouching for all of the  
6 math. I'd want to run through that, but  
7 that's an accurate statement of what it says.

8 Q Okay. And, by the way, the [REDACTED]  
9 [REDACTED] number that we just did, that's a per  
10 year number in your calculation. Correct?

11 A I don't know. Well, I believe it  
12 is.

13 Q Okay.

14 A But I don't know.

15 Q Okay. So, then, this was your  
16 effort to calculate what's in it for Comcast  
17 from a cost-savings perspective. Correct?

18 A That particular calculation was  
19 what's in it for the Broncos, in terms of a  
20 loss. The second piece is Comcast's potential  
21 benefit from selling by the sports tier.

22 Q So you don't dispute the idea in

1     this case, generally, that Comcast, as a  
2     distributor, has made significant cost-savings  
3     by tiering the NFL Network.  You don't dispute  
4     that.

5           A       Comcast, as a distributor, has  
6     made significant cost-savings.  That's  
7     correct.

8           Q       And is it, in your view,  
9     discrimination for a distributor, as a  
10    distributor, to try and save money like that?

11          A       Discrimination for a distributor  
12    to try to save money?

13          Q       To try to save money?

14          A       It is if it's the result of  
15    disparate treatment of similarly situated  
16    networks, yes.

17          Q       And your calculation here in  
18    conversation to Mr. Ellis of the Broncos makes  
19    no reference to any disparate treatment of any  
20    Comcast networks.  Does it?

21          A       No.

22          Q       You don't make any reference in

1 your email in '07 to Versus, or to Golf, or  
2 anything like that in this calculation or  
3 discussion, do you?

4 A No, I don't.

5 Q You just did the calculation as  
6 what a straight cable distributor would be  
7 able to save by tiering something and saving  
8 money. Correct?

9 A Well, as I said, I was looking at  
10 it from a club perspective, but that's the  
11 flip-side of the coin. Yes, sir.

12 MR. CARROLL: Okay. You can put  
13 that exhibit to the side.

14 JUDGE SIPPEL: That being Exhibit  
15 306.

16 MR. CARROLL: Yes, Your Honor,  
17 that's 306.

18 BY MR. CARROLL:

19 Q Now, almost done the sequence, and  
20 then we'll, hopefully, wrap up with a few  
21 other issues here. Now, we've talked about  
22 the cost, cost-savings, the price of this.

1 Was there ever a discussion with the Owners  
2 about maybe reducing the price of the network  
3 a lot more than five cents, and trying to get  
4 distribution with all the cable companies?

5 A With the Owners, I can't say for  
6 certain. Internally, yes. Internally, at the  
7 staff level, yes.

8 Q Are you familiar with something  
9 known as a market clearing rate? Is that a  
10 term that has meaning to you?

11 A Not as a term of art in this  
12 particular context. But I believe, in  
13 essence, that would be the rate that would  
14 definitely get carriage throughout the  
15 industry.

16 Q So, a market clearing rate would  
17 be a price that would definitely get you  
18 distribution throughout industry?

19 A Yes. Not necessarily fair value,  
20 but it might be the equivalent of a teaser  
21 discount.

22 Q Well, let me just see if you'll

1 agree to a hypothetical such as this. If you  
2 are a company and you have inventory, and  
3 maybe you've got 100 items in inventory, and  
4 you've been able to sell half of them at a  
5 certain price, maybe \$100, but you still have  
6 50 more to sell. The idea of a market  
7 clearing rate is that maybe you lower the  
8 price for the next 50 so you can sell all of  
9 them out to the market. Correct?

10 MR. LEVY: Your Honor, this  
11 morning Mr. Carroll argued that Mr. Hawkins  
12 was not an expert witness. Now he's putting  
13 to him hypotheticals. It's not an appropriate  
14 question for a -

15 MR. CARROLL: Your Honor, this is  
16 a term in a document that Mr. Hawkins - I'm  
17 about to show him, if counsel would prefer  
18 that I show him the document first, I have no  
19 problem - but this is a factual predicate for  
20 this question.

21 MR. LEVY: Ask him what the term  
22 means.

1 JUDGE SIPPEL: Well, let's see.  
2 Mr. Hawkins is doing pretty well handling the  
3 question. Mr. Hawkins, certainly, I've been  
4 listening to him now for a few hours, and  
5 certainly, he's very comfortable with this  
6 subject. That's not, necessarily, getting to  
7 the level of an expert, who is proffered as an  
8 expert.

9 MR. LEVY: My objection was to the  
10 question, Your Honor, the hypothetical  
11 question of a fact witness is inappropriate.  
12 If Mr. Carroll wants to ask him what does the  
13 term mean, he can ask him that question. He  
14 already asked him that question. He didn't  
15 like the answer.

16 MR. CARROLL: No, no.

17 JUDGE SIPPEL: Well, as part of  
18 the cross -- cross examination is -- it's not  
19 kindergarten lunch. He's got to do some --  
20 this is a tough witness. He's a good  
21 witness, and Mr. Carroll is being challenged.  
22 To a certain degree, I'm giving him leeway.

1 I don't think it's gotten out of hand.

2 MR. LEVY: Okay. Well, I don't  
3 think it's gotten out of hand, because I've  
4 been quite passive during the course of the  
5 afternoon and during the day.

6 JUDGE SIPPEL: You've been very  
7 helpful to the whole process, sir.

8 MR. LEVY: Okay. The witness can  
9 answer the question.

10 JUDGE SIPPEL: Well, let's back  
11 up. I don't know what the record is going to  
12 show. Can we start this one all over again,  
13 the question?

14 MR. CARROLL: Sure. I can do my  
15 question, and I'll save our fine reporter.

16 BY MR. CARROLL:

17 Q As an illustration of the concept  
18 market rate clearing, market clearing rate, my  
19 hypothetical was, is it a situation like this,  
20 where a company maybe has 100 items in  
21 inventory to sell. It sells the first 50 at  
22 say \$100, and it wants to sell the remainder.

1 But if it keeps the price at that level, it  
2 won't sell them, so it lowers the price, maybe  
3 to \$50. And it sells the rest of them. And  
4 the combination of those two prices, the \$100  
5 for the first batch, and the \$50 for the  
6 second averaged together is the market  
7 clearing rate concept. Do you agree with that  
8 general description?

9 A Look, I'm not an economist. I was  
10 a government major in college, and I don't  
11 know whether it's a term of art, but I would  
12 agree that the average price that it took to  
13 sell everything out could be said by some to  
14 be a market clearing rate.

15 Q Okay. And did you, yourself, in  
16 briefing the Owners on the status of the NFL  
17 Network use that term, market clearing rate,  
18 in any slide decks?

19 A I don't know whether I did or not.

20 MR. CARROLL: Okay. Your Honor,  
21 for identification, this is Comcast Exhibit  
22 301, Bates numbers NFL-E000168 through 181,

1 cover page email dated January 22, 2008 from  
2 Kim Williams with what appears to be a slide  
3 deck attached.

4 JUDGE SIPPEL: Comcast 301.

5 MR. CARROLL: Yes.

6 JUDGE SIPPEL: Identified as  
7 Comcast 301, as you have indicated.

8 (WHEREUPON, THE DOCUMENT REFERRED  
9 TO WAS MARKED AS COMCAST EXHIBIT  
10 301 FOR IDENTIFICATION.)

11 MR. CARROLL: May I distribute,  
12 Your Honor?

13 JUDGE SIPPEL: Please, do.

14 MR. CARROLL: Thank you.

15 BY MR. CARROLL:

16 Q First, do you see the email on the  
17 first page, the subject line says "Deck for  
18 Jones Kraft Call." Do you see that?

19 A Yes.

20 Q Jones, that's Jerry Jones, the  
21 owner of the Dallas Cowboys?

22 A Correct.

1           Q       And Kraft is Mr. Kraft, the owner  
2 of the New England Patriots. Correct?

3           A       Correct.

4           Q       And then we have a slide deck that  
5 is attached to this. Do you see that?

6           A       Yes.

7           Q       And you agree with me that this is  
8 a slide deck that was prepared in connection  
9 with a briefing conversation with at least  
10 some of the Owners?

11          A       That's what it appears to be, sir.

12          Q       Okay. And you participated in  
13 helping to put the materials together. Is  
14 that correct?

15          A       Let me finish looking through  
16 them. Yes, I did.

17          Q       Okay. If we turn over to page 8  
18 of the -

19                   MR. CARROLL: First of all, move  
20 this into evidence, Your Honor.

21                   JUDGE SIPPEL: Any objection?

22                   MR. LEVY: No, sir.

1 JUDGE SIPPEL: Received in  
2 evidence as Comcast 301.

3 (WHEREUPON, THE DOCUMENT REFERRED  
4 TO, PREVIOUSLY MARKED COMCAST  
5 EXHIBIT NO. 301 FOR  
6 IDENTIFICATION, WAS RECEIVED IN  
7 EVIDENCE.)

8 BY MR. CARROLL:

9 Q And if you'll turn over, sir, to  
10 page 8 of the slide deck, that ends with the  
11 Bates number 176. You should find a slide  
12 headed, "Pricing Reduction."

13 A Yes, sir.

14 Q And do you see the first bullet  
15 listed there, it says, "Market clearing rate  
16 reduction would result in wide distribution of  
17 NFL Network." Underneath that it says,  
18 "Possible range [REDACTED] Have I read  
19 it correctly?

20 A Yes, you have.

21 Q And were, in fact, the Owners, as  
22 this slide indicates -- was there discussion